

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA

4 ***

5 DARYAL TAYLOR,
6

7 Plaintiff,

8 vs.

9 ROBERT BECKETT, *et al.*,

10 Defendants.

No. 2:13-cv-2199-APG-VCF

ORDER

11 This matter involves Plaintiff Daryal Taylor's civil rights action arising under 42 U.S.C. § 1983
12 against Defendant Robert Beckett, *et al.* (*See* Compl. (#1) at 2). Before the court is Taylor's *ex parte*
13 application for an order extending time to serve (1) C.O.P.S., (2) Ltnt. Ed Howard, and (3) Officer Mary
14 Huggins. (#24). For the following reasons Taylor's motion is granted.

15 **DISCUSSION**

16 Taylor's motion presents one question: whether the court should afford the Plaintiff additional
17 time to serve the above mentioned parties in this action. However, prior to discussing Taylor's argument
18 the court will briefly discuss the local rule governing *ex parte* motions.

19 ***A. Ex Parte Motions Under Local Rule 7-5(a)***

20 As defined by Local Rule 7-5(a), an *ex parte* motion is a motion "filed with the Court, [that] is
21 not served upon the opposing or other parties." *See* LR 7-5(a). The purpose of an *ex parte* motion is,
22 therefore, to allow a party to communicate with the court privately. For this reason, *ex parte* motions
23 must "contain a statement showing good cause why the matter was submitted to the Court without notice
24 to all parties." LR 7-5(b). An *ex parte* motion should be made when a movant does not want a party or
25 their opposing counsel to be served, not because the movant cannot serve the party. By filing the motion

1 on an *ex parte* basis, Defendants will never be served with this document. *See* Black’s Law Dictionary
 2 (9th ed. 2009), *ex parte* motion (“[A] motion that a court considers and rules on without hearing from all
 3 sides”).

4 The Plaintiff’s *ex parte* motion in this matter was inappropriate. Whether service of process is
 5 appropriately executed is a matter that affects a Defendant’s due process rights under the Constitution.
 6 *See Crowley v. Bannister*, 734 F.3d 967, 975 (9th Cir. 2013) (citing *Jackson v. Hayakawa*, 682 F.2d
 7 1344, 1347 (9th Cir. 1982)) (stating that personal jurisdiction over a Defendant is conferred by
 8 compliance with Rule 4). A Defendant must be afforded an opportunity to challenge service if they
 9 believe that service was not executed in accordance with the Constitution’s “traditional notions of fair
 10 play and substantial justice.” *See Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). The court
 11 finds no sufficient basis for the motion to be submitted without notice to the parties, and, in fact, the
 12 Plaintiff admits that Defendant’s counsel has stipulated to the extension of service for his clients
 13 C.O.P.S., officer Huggins, and officer Howard.

14 ***B. Plaintiff Has Made a Showing of Good Cause to Extend Time for Service of Process***

15 Pursuant to Federal Rule of Civil Procedure 4(m), a Plaintiff has 120 days after a complaint is
 16 filed to serve a Defendant. However, if a Plaintiff makes a showing of good cause “for the failure, the
 17 court must extend time for service for an appropriate period.” Fed. R. Civ. P. 4. Furthermore, “even if
 18 plaintiffs cannot show good cause for failure to effect service of the 120 days of filing complaint, court
 19 may, within its discretion, extend service rather than dismiss the action without prejudice.” *Tyson v.*
 20 *City of Sunnyvale*, 159 F.R.D. 528 (N.D. Cal. 1995).

21 The court finds that the Plaintiff has made a sufficient showing of good cause for the Plaintiff’s
 22 failure to serve the Defendants. The relocation of the Defendants outside of the state of California
 23 warrants additional time to locate and serve the Defendants. The Plaintiff attempted to properly serve the
 24 Defendants via licensed process server, however, upon realization that the Defendant’s Huggins and
 25

1 Howard had relocated outside of the state of California the Plaintiff filed this motion to extend time.
2 Similarly, the Plaintiff attempted to serve C.O.P.S. at the Defendant's address on file at the Secretary of
3 State. However, because the address on file is incorrect, the Plaintiff was unable to properly serve the
4 Defendant. The Defendant's failure to update their address with the Secretary of State warrants an
5 extension of time to allow the Plaintiff to locate and serve the Defendant.

6 ACCORDINGLY, and for good cause show,

7 IT IS ORDERED that Taylor's Motion to Extend Service (#24) is GRANTED.

8 IT IS FURTHER ORDERED that the Plaintiff be given 90 days from the date of this order to
9 serve the Defendants.

10 IT IS FURTHER ORDERED that the Clerk remove the *ex parte* designation from Taylor's
11 Motion to Extend Service (#24).

12 IT IS SO ORDERED

13 DATED this 27th day of March, 2014.



14 CAM FERENBACH
15 UNITED STATES MAGISTRATE JUDGE
16
17
18
19
20
21
22
23
24
25